

REMARKS

Claims 1-16, 19-21 and 23-38 are pending in the application, with claims 1, 19, 20, 21, 26, and 31 being independent. Claims 20, 21, 25, 31 and 38 are amended by entry of this response. Claim 36 is cancelled by entry of this response. Applicant appreciates the Examiner's indication that claims 1-16, 19, 20, 35, and 37 are allowable. Additionally, the Examiner has found that claim 25 contains allowable subject matter, but has objected to the claim as being dependent on an unallowable base claim. Applicant notes that the office action summary also indicates that claim 34 is allowable, but the Examiner did not address this claim in the office action.

Applicant also notes that claim 33 has been rejected even though claim 33 is dependent on an allowed claim (claim 1). Given the Examiner's comments in the office action, it would appear that the rejection of this claim is an oversight and that it should have been allowed. Applicant respectfully requests that this rejection be withdrawn.

Applicant would like to thank Examiner Milano and Examiner Roberts for the telephone interview conducted with Applicant's representatives, Kevin Greene and Phyllis Kristal, on February 25, 2004. During the course of the telephone interview, the Examiners' application of the Foerster reference to the rejected claims was discussed as noted below.

Referring to figure 12A of Foerster, as Applicant's representatives understand the Examiners' application of Foerster to claim 21, toggle ring 572 has been equated to the claimed applicator, die tube 558 has been equated to the claimed flexor, and the combination of Foerster's anchor 546 (including toggle ring 572) and tool (i.e., Foerster's suture anchor system 520) has been equated to the "anchor insertion tool" recited in the preamble of claim 21. As a result, according to the Examiners, the suture anchor system 520 includes a member (tube 556 and anchor 546) that includes an applicator (toggle ring 572). The Examiners' also assert that the member has a region configured to receive a tissue anchor (i.e., a second anchor in addition to anchor 546). Furthermore, the Examiners have equated delivery tube 550 with the claimed movable element.

Applicant has amended claim 21 to recite that the flexor is configured "to move with the movable element." Foerster does not describe or suggest that die tube 558 is configured to move with delivery tube 550. Rather, die tube 558 and delivery tube 550 are concentric tubes.

Therefore, claim 21 and those that depend therefrom are allowable over Foerster for at least the foregoing reasons.

The Examiners indicated that Foerster is applied similarly to claim 26. As Applicant understands the application of Foerster to claim 26, toggle ring 572 has been equated to the claimed applicator, and the combination of Foerster's anchor 546 (including toggle ring 572) and tool (i.e., Foerster's suture anchor system 520) has been equated to the "insertion tool" recited in claim 26. Under such a construction, assert the Examiners, Foerster discloses the method recited in claim 26.

However, under this construction, Foerster does not disclose at least "inserting a tissue anchor into tissue using the insertion tool," as recited in claim 26. While Foerster discloses anchor 546 being inserted into tissue, under the Examiner's construction, anchor 546 is part of the insertion tool and, therefore, the anchor 546's insertion does not meet the recitation of "inserting a tissue anchor into tissue using the insertion tool." In addition, Foerster does not describe or suggest inserting another anchor (other than anchor 546) into tissue using Foerster's "insertion tool" as interpreted by the Examiners (i.e., the suture anchor system 520, which includes anchor 546). Consequently, under the Examiner's construction, Foerster does not disclose or suggest the method of claim 26, as asserted by the Examiners.

Therefore, claim 26, and those that depend therefrom, are allowable over Foerster at least for the foregoing reasons.

Regarding claim 31, referring to figures 2A and 2B, the Examiners have equated struts 16 with the recited applicator and toggle ring 14 with the recited tissue anchor. As amended, claim 31 recites "engaging an applicator with a member to deflect the applicator such that the applicator rotates the tissue anchor during deployment of the tissue anchor into tissue." Foerster does not describe or suggest engaging struts 16 with a member to deflect struts 16 such that struts 16 rotate toggle ring 14 during deployment of toggle ring into tissue.

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Therefore, claim 31, and those that depend therefrom, are allowable over Foerster at least for the foregoing reason.


Applicant respectfully requests reconsideration and allowance of claims 21, 26, 31 and the claims that depend therefrom in light of the foregoing remarks.

Claim 1 has been amended to clarify the configuration of the applicator and the flexor in the tool of claim 1, particularly, that, the applicator and flexor are configured such that the applicator and flexor undergo relative axial motion when the applicator is deflected. Rather, in Foerster, die tube 558 and toggle ring 572 do not undergo relative axial motion when toggle ring 572 is deflected. Claim 20 has been amended to clarify which elements are part of the tool.

Enclosed is a check in the amount of \$840.00 for the 2nd and 3rd Month Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 4/1/04



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